

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENT WILLIAMS, <i>Pro Se</i> ,)	Case No.: 1:06 CV 122
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
BECI, WARDEN,)	
)	
Respondent)	<u>ORDER</u>

On January 18, 2006, Petitioner Kent Williams (“Petitioner” or “Williams”), *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition,” ECF No. 1) pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction for one count of felonious assault in violation of O.R.C. § 2903.11 with a peace officer specification (Indictment, ECF No. 13-2, at 1). Williams alleged four grounds for relief, addressing three matters: witness behavior, ineffective assistance of counsel, and prosecutorial misconduct. (Petition, ECF No. 1, at 4-5; Report and Recommendation at 5, ECF No. 15.)

This court referred the case to Magistrate Judge George J. Limbert for preparation of a Report and Recommendation. (ECF Nos. 2, 9.) On June 26, 2006,¹ Respondent Michele Eberlin,

¹ The Magistrate Judge’s Report and Recommendation erroneously lists this date as May 26, 2006. (ECF No. 15, at 6.)

the Warden of Belmont Correctional Institution (“Respondent” or “BECI”) filed its Return of Writ. (ECF No. 13.) The Magistrate Judge submitted his Report and Recommendation on March 5, 2007, recommending that Williams’ Petition be dismissed. (ECF No.15.) Specifically, the Magistrate Judge found that Petitioner’s first and third grounds for relief are unexhausted and procedurally defaulted; that his second claim is both procedurally defaulted and meritless; and that his fourth claim is meritless. (*Id.* at 10-15.)

As of the date of this Order, Petitioner has not filed objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge’s recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The court notes that the copy of the Report and Recommendation that was mailed to Petitioner was twice returned because Petitioner no longer lives at either of the addresses on file with the court.² (*See* ECF Nos. 16, 17).

The court finds, after careful review of the Magistrate Judge’s Report and Recommendation and all other relevant documents, that the Magistrate Judge’s conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge’s Report and Recommendation. (ECF No. 15.)

Consequently, Williams’ Petition is hereby denied, and final judgment is entered in favor of Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this

² As the Magistrate Judge stated, Petitioner was released from BECI and is currently on post release control. (Report and Recommendation at 2 n.2.) Because Petitioner filed his Petition while incarcerated, “his subsequent release on parole does not defeat federal jurisdiction.” (*Id.*) (citing *Carafas v. Lavallee*, 391 U.S. 234, 238 (1968) and *Maleng v. Cook*, 490 U.S. 488, 490-491 (1989)).

decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

April 17, 2007